Ld

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CHAMBER SUMMONS NO. 55 OF 2006
IN
EXECUTION APPLICATION 21 OF 2005
IN
SUMMONS FOR JUDGMENT NO.1328 OF 2001
IN
SUMM.SUIT NO.3866 OF 2001

Mahesh Chandru Advani ... Plaintiff

vs

Mahesh Patel .. Defendant
&
Ramji Keshavji Patel .. Applicant

Mr.Salim Hakim for Plaintiff

Ms.Sunita Tiwari with Mr.Firdause Irani for Applicant

CORAM : SMT R.S.DALVI, J

DATED : 10th January, 2007

P.C.

1. This Chamber Summons is taken out by the applicant who claims to be owner of a shop got attached in execution of a decree passed in the above suit on 17th March, 2003. The shop which has been attached in execution is shop no.8, Vishwananak Apts, Opp Hindusthan Lever, Chakala, Andheri (E) Mumbai-99 (the said shop).

2. The applicant has relied upon a copy of a registered agreement showing the purchase of the

said shop by the applicant from one M/s Sangeeta Construction Company for Rs.12,00,000/-. The receipt clause of the agreement shows payment of RS.6,00,000/- made by cheque no. 876642 dated 3rd April, 2002.

3. The applicant has produced the statement of his account with Punjab and Maharashtra Coop Bank Ltd for the relevant period showing the payment under the said cheque made to Sangeeta Construction Company. Further payment of Rs.6,00,000/- has been made to Sangeeta Construction Company on 10th April, 2002. It is contended on behalf of the applicant upon the Court's querry that the applicant took various loans from persons to generate funds for purchasing the said shop and has thereafter repaid the loans.

4. The applicant has inter alia relied upon the electricity bills in the name of the applicant for the said shop dated 15th January, 2003. and the receipt of the cooperative society showing various payments to the society under their bill no.31103 also in the name of the applicant. Prima facie, therefore the applicant has shown that the property attached does not belong to the judgment debtor but to him.

5. The applicant has also shown how he has dealt with his ownership premises after its purchase. He has produced the unregistered agreement between himself and one Ramesh Natha Patel as a licencee having given the said premises on licence from 1st August, 2002 to 30th April, 2005. The licencee was to carry on business in the name and style of 'Jigna Computer Stores' and in the said premises. The defendant in the suit is one Mahesh Patel. It is contended on behalf of the plaintiff that his brother and he carried out business together albeit as sole proprietors and received the goods and made payments by cheques alternatively. The cheques have been dishonoured. It is not known that Ramesh Natha Patel who is shown as licencee of the applicant is the same Ramesh Patel who is the brother of the defendant. The defendant is shown to be carrying on business in the name and style of 'Rangila Computers'or 'Rangila Computers skills.' Even if the licencee in the agreement with the applicant is the same Ramesh Patel, the licence agreement shows that he was not the owner but only a licencee. At best, brother of the defendant may have licenced the premises from where he carried on the business of computer stationery albeit in another name. He, therefore gave an impression and

made a representation that he owned the shop which he did not.

6. The applicant terminated the said licence and has thereafter sought to utilise his premises for ATM with Citi Bank. The agent of Citi Bank one Euro Net City Pvt.Ltd has entered into a leave and licence agreement as well as service agreement with the applicant. The leave and licence agreement with Euronet City Pvt.Ltd is registered. The applicant has produced a xerox copy showing the stamp and seal of the Sub-Registrar of Assurances and registration particulars. The service agfreement is executed by the applicant as well as by his wife with the agent of Citi Bank Euro Net Service Pvt.Ltd. The service agreement is not registered.

7. Under the said service agreement, the applicant has received various amounts from time to time from Citi Bank. These are stated to be the licence fees. The licence fees under the agreement is shown to be Rs.18,000/- per month. It is contended on behalf of the applicant that the licence fees are received from Citi Bank partly by the applicant and partly by his wife and are accordingly credited in their respective a/cs. The bank statement of

the applicant shows various credit entries of Citi Bank from month to month though they are not for Rs.18,000/- per month.

8. Upon my querry, the applicant has produced two counter foils of pay and slip books of January, 2007 showing 2 separate amounts credited in the a/c of the applicant as well as his wife on 9th January, 2007.

9. The applicant has accordingly shown his ownership and has further substantiated user of the premises by himself.

10. It is contended on behalf of the applicant that the notice of demand sent by the plaintiff to the address of the applicant was addressed to the defendant and his brother Ramesh Patel and has been received thereat. The acknowledgment slip of registered post shows the receipt. It has been replied by the advocate of the defendant who had represented Ramesh Patel together with the said reply. Those aspects show collusion between the two brothers but, not collusion between the defendant and the applicant. Therefore, though the plaintiff could have been misled by the defendant

and his brother by making a representation that the attached shop belonged to them, the applicant has shown that infact it does not. Consequently, the attachment levied on the applicant's shop is required to be raised.

11. Chamber Summons is made absolute in terms of prayer clause (a).

12. No order as to costs.

(Smt R.S.Dalvi,J)